

**Houston Planning Commission
Neighborhood Preservation Subcommittee
Concept Paper
12/15/05**

Statement of Purpose

Preservation of residential neighborhoods is not a question of maintaining status quo. Life is marked by change; and the essence of a neighborhood is marked by the pace with which that change occurs.

Houston's continued physical and economic growth is inevitable and desirable, but rapid appreciation and redevelopment in many urban neighborhoods is altering the existing fabric of these communities. Incentives should be created to preserve existing housing stock when such action would not otherwise be economically feasible.

Houston is a relatively young city, even by American standards, yet its history is rich. Historic preservation has only begun to take hold; some buildings with significant links to Houston's past are being preserved. But the character of a neighborhood lies in its ordinary structures and what they say about the residents who have, over the decades, invested in the fabric of their communities.

Houston's residents deserve a stable environment for their communities (and property values) to grow, and the right to meaningful participation in their neighborhood's future. Only widespread education and access to the planning process will allow Houston's citizens to contribute to the success of their community. The Neighborhood Preservation Committee examined and recommended changes to certain key ordinances to strengthen protection for neighborhoods. The Committee also recommends additional study for certain recommendations regarding the protection of neighborhood character.

Neighborhood Preservation Goals:

Quantify elements of neighborhood character that can be addressed in Houston's Planning and Development Code of Ordinances. Ordinances addressing prevailing lot size and building setbacks have set precedent by demonstrating the potential effectiveness of using quantitative measures to regulate qualitative aspects related to neighborhood 'character'. Quantifying other elements of character, such as appropriate structural scale, should be investigated, as well as graduated development "performance standards' based on existing neighborhood characteristics.

Open the development regulation process in a meaningful way to neighborhood residents. For the people to constructively participate in the growth of their city, they must be informed and have the time to act on that information. Since many of Houston's procedural planning ordinances are driven by State statute, legislation may be necessary. At the City level, however, efforts to improve outreach can be better designed to leverage existing community activism.

Subcommittee Products

Amendments to Prevailing Building Line and Prevailing Lot Size ordinances

Significant steps have been taken to protect neighborhood character, on a block-by-block basis, through the special provisions of Chapter 42 dealing with prevailing setbacks and prevailing lot sizes. These particular provisions, however successful, do

have problems that need to be addressed. For example, the term “prevailing”, as the most frequently occurring can lead to a situation where setbacks or lot sizes on one or two blocks vary on every lot but two. Also, the ordinances reliance on number of lots to measure neighborhood character instead of total lot area often excludes blocks that have a definite character to preserve.

While lowering the threshold of qualifying lots from 75% to somewhere between 51% and 60% would allow more older neighborhoods to remain intact, committee members did not come to consensus. On the other hand, all agreed that changing the basis of the calculation from number of lots included in the application to area of lots would eliminate the problem and the desire to alter the threshold. Attachment A provides an example of how this revised calculation would work. The Planning Commission should solicit additional input from the Greater Houston Builders Council and the public before proceeding with amending Chapter 42 to reflect this recommendation.

Also, proposed technical revisions as indicated in Attachment B should be incorporated into the ordinance.

In addition, more thought should be given to the concept of allowing neighborhoods to preserve the existing lot sizes, regardless of whether a prevailing size exists. This would allow older Inner Loop neighborhoods where slight changes in parcel boundaries have been made over the years to preserve, what appears to the eye, to be a definite character. While the Committee was supportive of this concept, more discussion is needed to establish criteria for implementation and to consider any unintended consequences.

Neighborhood Character

A working group should be established to define a menu of options for preserving character across an entire neighborhood or lesser portion as requested by an owner applicant and approved by the Planning Director. Criteria and application will be similar in concept to Prevailing Lot Size and Prevailing Building Line. Ordinance and deed restrictions will take precedence over any proposed ordinance. In addition to prevailing lot size and prevailing set backs, the following criteria might be considered:

1. Lot coverage relative to structures on the lot (permeability)
2. Height in linear footage
3. Side setbacks
4. Garage location
5. Architectural Style

Performance Standards

Houston's unique history of land use and development has created an eclectic mix of land uses. While many of these uses compliment one another and work to create a unique urban framework, this is not always the case. The absence of a zoning ordinance has allowed for the existence and creation of incompatible uses throughout the city, most notably in older neighborhoods.

The concept of performance standards is predicated on the idea that by meeting certain established criteria new developments minimize their impact on the surrounding area and community as a whole. The purpose is to:

- Minimize the negative impact of development on single family residential areas
- Promote neighborhood stability

- Reduce traffic congestion and pedestrian/auto conflicts along local streets
- Mitigate potential nuisances such as traffic, noise, dust, glare, vibration, fire hazards, air pollution, etc.
- Guide non-single family development to areas that are more compatible with the type and intensity of the proposed use.

If implemented carefully, this concept holds great opportunity for the City of Houston.

The committee supports the Performance Standards concept and recommends the Planning Commission conduct a thorough testing of possible scenarios following a two pronged approach:

- 1) Prevent businesses from locating on streets in areas that are predominantly single family residential.
- 2) Study the effects of mitigation where predominantly single family residential is adjacent to commercial development along streets.

Additional Recommendations:

- Consider separate criteria for commercial developments located on major thoroughfares and freeways. Note: commercial developments must continue to comply with existing building code
- Consider separate criteria for development on large tracts on land
- Consider appropriate grandfathering of existing commercial developments
- Make sure Performance Standards are simple
- Ensure adequate enforcement
- Case studies should be performed to study the unintended consequences of implementation.
- Encourage Lifestyle or Mixed Use Development

Public Notification

State law requires notification to property owners within 200' of a replat in the original plat boundary if any lot in the proposed subdivision was or is deed restricted to 1 or 2 dwelling units. However, recent amendments to Chapter 42 require notification to registered civic associations and to property owners within 250 feet of the proposed plats and replats when the application includes a variance request. The purpose of this provision was to allow neighborhoods to provide input to the Planning Commission on items where the commission has discretion.

Public notice of impending residential replats is important to neighborhood preservation. Even when a project meets the rules, opportunities exist for nearby property owners to discuss their concerns with the developer and, perhaps, affect the final outcome. Also, notice of replats allows neighborhoods to identify potential deed restriction violations that could impact their communities for years to come. The Planning and Development Department should improve the notification system by including original plat names for each application on the Subdivision Plat Summary E-Report and further expand e-mail notification to neighborhood representatives.

Other Issues

A number of additional issues surfaced throughout the six months of discussions though time did not allow for thorough examination of potential solutions. Therefore, the

Subcommittee recommends that Planning Commission establish an ongoing advisory council on neighborhood preservation issues to continue the dialogue and address other issues.

Attachment A

Prevailing lot size eligibility calculation based on lot AREA

Consider a traditional Heights blockface, with twelve (12) 50' X 133' (6600 SF) lots.

In a simple example of the effect of using AREA to determine blockface eligibility, a progression of (common) subdivisions is compared below:

Number of subdivisions	Resulting number of lots in blockface (excluding corners)	Remaining "prevailing" lots	Non-"prevailing" lots	Ratio based on total NUMBER of lots	Ratio based on AREA (division by 66,000 SF)
0	10	10	0	100%	100%
1	11	9	2	82%	90%
2*	12	8	4	67%	80%
3	13	7	6	54%	70%

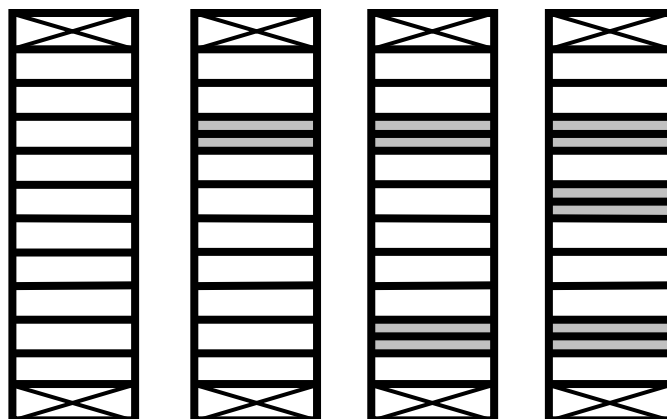
*Sample Calculation (2 subdivisions):

Ratio based on NUMBER of lots = $8 / 12 = 67\%$

Ratio based on AREA of prevailing lots = $(8 \times 6600 \text{ SF}) / 66000 \text{ SF} = 80\%$

While "character" as it relates to size is a 3-dimensional "quality", using area (2-D) more appropriately weights the visual contribution of a given lot to a blockface's overall look.

(sample)



Attachment B

8/1/05

Sec. 42-213. Preservation of prevailing lot sizes.

- (a) To preserve the character of existing residential neighborhoods in ~~urban areas~~ *the city* that do not have minimum lot size established by deed restrictions, the minimum lot size may be established pursuant to this section through the creation of a special minimum lot size area, and a minimum lot size so created will prevail over any lesser minimum lot size established by this article. A minimum lot size established pursuant to this section shall not be established that is greater than the prevailing lot size of the area to be designated. *A lot that is smaller than the minimum lot size established pursuant to this section and that legally exists at the time the minimum lot size is established shall be deemed to meet the minimum lot size requirement and shall be eligible for one or more building permits for construction on the lot.* An area qualifies for establishment of a special minimum lot size pursuant to this section unless all lots in the area to be designated are subject to a deed restriction establishing a uniform minimum lot size for the area.
- (b) The establishment of a special minimum lot size area shall be initiated by application to the department in the form prescribed by the director. The application shall include the following:
 - (1) The proposed boundaries of the special minimum lot size area, which shall be no less than one blockface;
 - (2) A map or sketch showing the address and land use for all lots within the proposed special minimum lot size area;
 - (3) Data for each lot within the proposed special minimum lot size area showing the actual size of each lot;
 - (4) A petition signed by at least one owner of property proposed to be included within the special minimum lot size area; and
 - (5) Evidence of support from the owners of property within the proposed special minimum lot size area.
- (c) *An application may not be amended to include additional blockfaces or exclude any blockface included in the application once the director determines the application is complete.*

- (d) Within ten days after receipt of a complete application for the creation of a special minimum lot size area, the director shall give notice of the application for the creation of a special minimum lot size area to the owners of property within the proposed special minimum lot size area as shown on the most recent tax rolls for the county in which the proposed area is located. Notice shall be given by letter deposited into the United States postal service, postage paid. Notice shall also be given by signs placed in at least two locations within the proposed minimum lot size area. The signs shall conform to the specifications prescribed by the director and shall be posted by the applicant.
- (e) A property owner within the proposed special minimum lot size area may protest the application for special minimum lot size area by filing a protest with the department within 15 days of the date of the notice letter.
- (f) The director shall approve the application for establishment of a special minimum lot size area upon determining that each of the following conditions exist:
- (1) The application satisfies each of the criteria of subsection (h);
 - (2) The petition was signed by the owners of 51 percent or more of the lots or tracts within the area proposed for special minimum lot size area; *adjacent lots under common ownership shall be treated as one lot when a structure is built over the common lot line.* and
 - (3) A timely protest of the establishment of the special minimum lot size area was not filed by any property owner within the proposed minimum lot size area.

Upon approval of an application, the director shall take the appropriate steps to refer the application to the city council.

- (g) The director shall promptly refer an application to the commission if he cannot approve the application pursuant to subsection (f) of this section. Within 30 days after the director refers the application for the creation of a special minimum lot size area, the commission shall conduct a public hearing on the application at a regularly scheduled meeting of the commission. The director shall give notice of the

public hearing to each owner of real property within the proposed special minimum lot size area by letter deposited into the United States postal service, postage paid, no later than 15 days before the date of the public hearing. The owners of property within the proposed special minimum lot size area and any other person may present comments in person or in writing at the public hearing.

(h) After the close of the public hearing, the commission shall consider whether to recommend that the city council establish the special minimum lot size area. The commission shall recommend the establishment of a proposed special minimum lot size area if it finds that the application satisfies each of the following criteria:

- (1) The boundaries of the proposed special minimum lot size area will include all properties within at least one blockface;
- (2) At least 60 percent of the lots to be included within the proposed special minimum lot size area are developed with or are restricted to not more than two single-family residential units per lot; *adjacent lots under common ownership shall be treated as one lot when a structure is built over the common lot line.*
- (3) That the applicant has demonstrated sufficient support for the establishment of the proposed special minimum lot size area to warrant the establishment of the area;
- (4) That the establishment of the proposed special minimum lot size area will further the goal of preserving the prevailing lot size character of the area; and
- (5) That the proposed special minimum lot size area has a prevailing lot size. A prevailing lot size shall exist when 75 percent of the lots exclusive of corner in the proposed special minimum lot size area that does not vary by more than 10% from the prevailing lot size ~~average size of lots within~~ the proposed special minimum lot size area.

The director shall forward to the city council each commission recommendation for the establishment of a special minimum lot size area. If the commission does not recommend the establishment of a special minimum lot size area, the decision of the commission shall be final.

(i) In determining whether to establish the proposed

special minimum lot size area, the city council shall consider the recommendations of the director of the commission, as applicable, and the criteria in subsection (g). The city council shall establish each proposed special minimum lot size area by ordinance, which shall specify that the prevailing lot size shall be the minimum lot size for the special minimum lot size area. The director shall file for recordation in the real property records of the county or counties in which the special minimum lot size area is located the ordinance designating the special minimum lot size area.

- (j) The special minimum lot size area shall terminate 20 years after the effective date of the ordinance establishing the area, unless earlier terminated by an ordinance adopted by the city council.
- (k) The following rules shall govern approval of subdivision plats before and after an application for establishment of a minimum lot size area is filed with the department.
 - (1) If a complete, valid subdivision plat application is filed before the time an application for the establishment of a minimum lot size area is filed with the department, the subdivision plat application shall not be subject to the special minimum lot size.
 - (2) If a complete, valid subdivision plat application is filed after the time an application for the establishment of a minimum lot size area is filed with the department, the subdivision plat application will be subject to the special minimum lot size unless:
 - a. The director determines that the application for the establishment of a special minimum lot size area is not complete; or
 - b. The department analysis pursuant to item (5) of subsection 42-194(g) of this Code demonstrates that the proposed special minimum lot size area does not have a prevailing lot size;
 - (3) If a complete, valid subdivision plat application is filed after the time a complete application for the establishment of a special minimum lot size area is filed with the department, the subdivision plat shall not be approved pending completion of action on the prevailing lot size application unless it meets the prevailing lot size determined by the department pursuant to paragraph (5) of

subsection 42-194(g) of this Code.

Notwithstanding the provisions of items (2) and (3) of this subsection, if the city council has not completed action on the special minimum lot size area application 180 days after the filing of the subdivision plat application, the subdivision plat application shall not be subject to the special minimum lot size.

Sec. 42-163. Preservation of prevailing building lines.

- (a) To preserve the character of existing blockfaces in residential neighborhoods in ~~urban areas~~ the city that do not have building lines established by deed restrictions, the building line requirement may be established pursuant to this section through the creation of a special building line requirement area, and a special building line requirement so created will prevail over any more lenient building line requirement established by this article. A building line requirement established pursuant to this section shall not be established that is greater than the prevailing building line of the blockface. A blockface qualifies for establishment of a special building line requirement pursuant to this section unless all lots on the blockface are subject to a deed restriction establishing a uniform front building line for the blockface.
- (b) The establishment of a special building line requirement area shall be initiated by application to the director in the form prescribed by the department. The application shall include the following:
 - (1) The proposed boundaries of the special building line requirement area, which shall be no less than one blockface;
 - (2) A map or sketch showing the address and land use for all lots within the proposed special building line requirement area;
 - (3) Data for each lot within the proposed special building line requirement area showing the distance from the front property line to each building on the lot;
 - (4) A petition signed by at least one owner of property proposed to be included within the special building line requirement area; and
 - (5) Evidence of support from the owners of property

within the proposed special building line requirement area.

- (c) *An application may not be amended to include additional lots or exclude any lots included in the application once the director determines the application is complete.*
- (d) Within ten days after receipt of a complete application for the creation of a special building line requirement area, the director shall give notice of the application for the creation of a special building line requirement to the owners of property within the proposed special building line requirement area as shown on the most recent tax rolls for the county in which the proposed area is located. Notice shall be given by letter deposited into the United States postal service, postage paid. Notice shall also be given by signs placed in at least two locations within the proposed special prevailing building line requirement area. The signs shall conform to the specifications prescribed by the director and shall be posted by the applicant.
- (e) A property owner within the proposed special building line requirement area may protest the application for special building line requirement area by filing a protest with the department within 15 days of the date of the notice letter.
- (f) The director shall approve the application for establishment of a special building line requirement area upon determining that each of the following conditions exist:
 - (1) The application satisfies each of the criteria of subsection (h);
 - (2) The petition was signed by the owners of 51 percent or more of the lots or tracts within the area proposed for special building line requirement area; *adjacent lots under common ownership shall be treated as one lot when a structure is built over the common lot line.* and
 - (3) A timely protest of the establishment of the special building line requirement area was not filed by any property owner within the proposed special building line requirement area.

Upon approval of an application, the director shall take the appropriate steps to refer the application to the city council.

- (g) The director shall promptly refer an application to the

commission if he cannot approve the application pursuant to subsection (f) of this section. Within 30 days after the director refers the application for the creation of a special building line requirement area, the commission shall conduct a public hearing on the application at a regularly scheduled meeting of the commission. The director shall give notice of the public hearing to each owner of real property within the proposed special building line requirement area by letter deposited into the United States postal service, postage paid, no later than 15 days before the date of the public hearing. The owners of property within the proposed special building line requirement area and any other person may present comments in person or in writing at the public hearing.

(h) After the close of the public hearing, the commission shall consider whether to recommend that the city council establish the special building line requirement area. The commission shall recommend the establishment of a proposed special building line requirement area if it finds that the application satisfies each of the following criteria:

- (1) The boundaries of the proposed special building line requirement area will include all properties within at least one blockface;
- (2) More than 50 percent of the lots to be included within the proposed special building line requirement area are developed with single-family residential units; *adjacent lots under common ownership shall be treated as one lot when a structure is built over the common lot line.*
- (3) That the applicant has demonstrated sufficient support for the establishment of the proposed special building line requirement area to warrant the establishment of the area;
- (4) That the establishment of the proposed special building line requirement area will further the goal of preserving the prevailing building line character of the area; and
- (5) That the proposed special building line requirement area has a prevailing constructed building line. ~~If department analysis demonstrates that less than 25-~~ *A prevailing building line shall exist when 75* percent of the single-family residential properties within the proposed special building line requirement area does not vary by more than 10% from the prevailing constructed building line measured from the property line to

the closest point of any building on the property, including garages and carports, ~~that varies by more than five feet from the most frequent constructed building line, the proposed special building line requirement area shall be deemed to have a prevailing building line, which shall be the most frequently occurring constructed building line.~~

The director shall forward to the city council each commission recommendation for the establishment of a special building line requirement area. If the commission does not recommend the establishment of a special building line requirement area, the decision of the commission shall be final.

- (i) In determining whether to establish the proposed special building line requirement area, the city council shall consider the recommendations of the commission and the criteria in subsection (h). The city council shall establish each proposed special building line requirement area by ordinance, which shall specify that the prevailing constructed building line shall be the building line requirement for the special building line requirement area. The director shall file for recordation in the real property records of the county or counties in which the special building line requirement area is located the ordinance designating the special building line requirement area.
- (j) The special building line requirement area shall terminate 20 years after the effective date of the ordinance establishing the area, unless earlier terminated by an ordinance adopted by the city council.
- (k) The following rules shall govern the issuance of building permits and the approval of subdivision plats and development plats before and after an application for establishment of a special building line requirement area is filed with the department.
 - (1) If a complete, valid building permit, subdivision plat or development plat application is filed before the time an application for the establishment of a special building line requirement area is filed with the department, the application shall not be subject to the special building line requirement;
 - (2) If a complete, valid building permit, subdivision plat or development plat application is filed after the time an application for the establishment of a special building line requirement area is filed with the department, the

- application will be subject to the special building line requirement unless:
- a. The director determines that the application for the establishment of a special building line requirement area is not complete; or
 - b. The department analysis pursuant to item (5) of subsection 42-163(h) of this Code demonstrates that the proposed special building line requirement area does not have a prevailing constructed building line.
- (3) If a complete, valid building permit, subdivision plat or development plat application is filed after the time a complete application for the establishment of a special building line requirement area is filed with the department, the building permit, subdivision plat or development plat shall not be approved pending completion of action on the application unless it meets the prevailing building line determined by the department pursuant to paragraph (5) of subsection 42-163(h) of this Code. Notwithstanding the provisions of items (2) and (3) of this subsection, if the city council has not completed action on the special building line requirement area application 180 days after the filing of a complete, valid building permit, subdivision plat or development plat application, the building permit, subdivision plat or development plat application shall not be subject to the special building line requirement.

